

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b).)	MM Docket No. 02-49
Table of Allotments,)	RM-10220
FM Broadcast Stations)	
(Worcester and Westborough, Massachusetts))	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 12, 2003

Released: November 14, 2003

By the Assistant Chief, Audio Division

1. At the request of Entercom Boston License, LLC ("Petitioner"), licensee of Station WAAF(FM), Channel 297B, Worcester, Massachusetts, the Audio Division has before it a *Notice of Proposed Rule Making*¹ proposing the reallocation of Channel 297B from Worcester to Westborough, Massachusetts, and the modification of Station WAAF(FM)'s license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Westborough. No other comments were received.

2. The proposed reallocation was filed pursuant to Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² In considering a reallocation proposal, we compare the existing versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ As stated in the *Notice*, Westborough is an incorporated town and has a 2000 U.S. Census population of 17,997 persons. Westborough is governed by an elected Board of Selectmen. The town maintains its own police and fire department and provides residents with water and sewer services. Westborough has its own zip code (01581). The town maintains parks and recreation centers, and has its own public

¹ *Worcester and Westborough, Massachusetts*, 17 FCC Rcd 4459 (2002).

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ See 90 FCC 2d 88 (1982). The FM allotment priorities are (1) First full-time aural service, (2) Second full-time aural service, (3) First local service, and (4) other public interest matters. {Co-equal weight is given to priorities (2) and (3). }

library. Westborough is home to over 100 local businesses and ten religious institutions. It has its own independent school district with three elementary schools, a middle school, and a high school. Westborough has two local newspapers and an official website.

3. The Commission now allows a station to change its community of license despite the presence of pre-1964 and pre-1989 "grandfathered" short-spacings and those permitted under Section 73.215 of the Commission's Rules.⁴ Consistent with that policy, we note that Station WAAF(FM) is a pre-1964 "grandfathered" station that is short-spaced to two pre-1964 grandfathered stations (WMJX(FM) and WXKS-FM), one pre-1989 station (WFCC(FM)) and three Section 73.215 stations (WFHN(FM) and WZSH(FM)) and to a recently issued construction permit (File No. BPH-20020531AAF) for Station WERZ(FM). However, since Station WAAF(FM) does not seek to change its transmitter site, no new short-spacing would be created, and no existing short-spacing would be exacerbated, Station WAAF(FM) should be afforded the opportunity to change its community of license. Moreover, both Worcester (population 172,648) and Westborough are located within the Worcester, MA-CT Urbanized Area and the 70 dBu signal will continue to cover 3% of the Boston, MA Urbanized Area, 98% of the Worcester MA-CT Urbanized Area, and 75% of the Fitchburg-Leominster, MA Urbanized Area. Therefore, no *Tuck* analysis is necessary.⁵ Additionally, because there is no change in the transmitter site, no gain and loss area study has to be provided.

4. We believe the public interest would be served by reallocating Channel 297B to Westborough, Massachusetts, since it would provide the community with its first local aural transmission service, without depriving Worcester of its sole local service.⁶ Channel 297B can be reallocated to Westborough in compliance with the Commission's minimum distance separation requirements without the imposition of site restriction at petitioner's presently authorized site.⁷ Although Westborough is located within 320 kilometers (200 miles) of the U.S. Canadian border, concurrence of the Canadian government is not necessary because there is no change in class or coordinates. In accordance with Section 1.240(i) of the

⁴ See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992); *Oceanside and Encinitas, California, and Berlin and North Conway, New Hampshire*, 14 FCC Rcd 15307 (1999) ((pre-1964 "grandfathered" short-spacing), *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999) (pre-1989 "grandfathered" short-spacing), and *Killeen and Cedar Park, Texas*, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing).

⁵ See *Long Beach and East Los Angeles, California*, 10 FCC Rcd 28672 (1995), see also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc.*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Luck*, 3 FCC Rcd 5374 (1988).

⁶ Five AM stations, four non-commercial educational stations, and one FM station would remain licensed to the community.

⁷ The coordinates for Channel 297B at Westborough are 42-18-11 North Latitude and 71-53-52 West Longitude.

While Station WAAF(FM) has an outstanding construction permit (File No. BPH-20030228AJE) at a different transmitter site, this minor modification does not constitute an upgrade in service and does not preclude grant of this proposal. See *Murrieta, et al., California*, 17 FCC Rcd 19458 (2002). Therefore, Station WAAF(FM) maintains its pre-1964 grandfathered status and is allowed to use its presently licensed site.

Commission's Rules, we modify Station WAAF(FM)'s license to specify operation on Channel 297B at Westborough, Massachusetts, as its new community of license

5 Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective, December 29, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Worcester, Massachusetts	241B
Westborough, Massachusetts	297B

6 IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Entercom Boston License, L.L.C. Station WAAF(FM), Worcester, Massachusetts, IS MODIFIED to specify operation on Channel 297B at Westborough, Massachusetts, subject to the following conditions.

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Entercom Boston License, LLC., licensee of Station WAAF(FM), is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following:

Entercom Boston License, L.L.C.
401 City Avenue, Suite 809
Bala-Cynwyd, Pennsylvania 19004

(Licensee of Station WAAF(FM))

9 IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10 For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau